

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

CHAPTER 11

MIDNIGHT MADNESS DISTILLING, LLC

CASE NO. 21-11750 (MDC)

**APPLICATION OF DEBTOR
TO EMPLOY WM. F. COMLY & SON, INC. AS MARKETING BROKER
PURSUANT TO SECTION 327 OF THE BANKRUPTCY CODE**

Midnight Madness Distilling, LLC (the “Debtor”), by and through its undersigned proposed counsel, hereby files this Application to Employ Wm. F. Comly & Son, Inc. as Marketing Broker Pursuant to Section 327 of the Bankruptcy Code, effective as of the date of this application, (the “Comly Application”), and respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F) and (O)
2. Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief sought herein is 11 U.S.C. §327.

BACKGROUND

4. On June 21, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 7 Case”).
5. By this Application, the Debtor seeks the entry of an order authorizing the Debtor to employ Wm. F. Comly & Son, Inc. (“Comly”) to be its Marketing Broker/Investment Banker and assist the Debtor in the marketing the offer memorialized in the Asset Purchase Agreement by and between the Debtor and ETOH Worldwide, LLC (the “Buyer”) dated as of June 21, 2021

(the “APA”) to seek higher and better offered for the assets and contacts to be assumed therein (as defined in the APA, the “Assets”) to other potential bidders. A copy of the Marketing Agreement between the Debtor and Comly is attached hereto as Exhibit “A” and incorporated herein.

6. Wm. F. Comly & Son, Inc. is one of the oldest auction companies in the United States. Founded in 1834, Comly has flourished to become a leading regional industrial auction firm serving the needs of manufacturing companies, industrial plants, secured lenders, lawyers, bankruptcy courts and owners for seven generations.

7. The Debtor believes that Comly’s extensive experience in similar sales in the industry and geographic area will assist the Debtor in realizing the highest possible price for the Assets.

8. At a minimum, Comly’s work will help ensure to this Court, the estate and its creditors that the contemplated APA to the Buyer will yield the highest and best offer that could be obtained for the Assets under the circumstances.

9. For this reason, the Debtor asserts that Comly’s retention is in the best interest of the estate and its creditors.

SERVICES TO BE PROVIDED

10. Subject to approval of this Court, Comly will prepare and implement a marketing program to promote the sale of the Assets. Specifically, some of Comly’s marketing efforts will include:

Direct Mail: A color postcard will be created and mailed to acquired mailing lists comprising of distilleries/alcohol distributors, bar/restaurant owners, business brokers and liquor license attorneys in Philadelphia, PA and surrounding areas as well as members from various food and beverage associations.

Newspapers: Advertisements will be placed in regional newspapers.

Internet: The direct mail postcard and sale details will be placed on our website along with photographs of the assets being offered for sale. In addition, we will place advertisements of the sale on business and restaurant trade websites.

Email Blasts: A professionally prepared electronic sale notice will be sent to our extensive in-house mailing list of opt-in subscribers under various categories such as business brokers, attorneys and bar/restaurant owners, distilleries and alcohol distributors.

COMPENSATION STRUCTURE

11. Subject to further Order of this Court, Comly will be compensated as follows:

Marketing: \$6,500.00

Labor & Travel: \$2,500.00

Commission: Comly is aware that the Debtor has received an expression of interest for the Assets from the Buyer in the APA (the “Existing Bidder”). If another party submits an offer that is higher and better and acceptable to the Debtor (the “New Bidder”), the Debtor agrees to pay Comly a ten percent commission (10%) of the difference between the initial bid of the Existing Bidder and the final, successful bid (irrespective of whether the final, successful bid is made by the New Bidder or an Existing Bidder).

12. Comly’s compensation will be subject to further application and approval by the Court.

LEGAL AUTHORITY

13. Based upon the Debtor’s view and the structure of this transaction, the Debtor submits that the proposed compensation to Comly is reasonable and appropriate.

14. Section 327(a) of the Bankruptcy Code provides, in relevant part, as follows:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee’s duties under this title.

11 U.S.C. § 327(a).

15. Section 328(a) of the Bankruptcy Code provides, in relevant part, as follows:

The trustee . . . with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis.

11 U.S.C. § 328(a).

16. Accordingly, this Court is authorized to grant the relief requested in this Application.

NO ADVERSE INTEREST, DISINTERESTEDNESS

17. Comly is a "disinterested person" as defined by section 101(14), and used in Section 327(a) of the Bankruptcy Code. As set forth in the Verified Statement of Stephen E. Comly, President of Wm. F. Comly & Son, Inc., attached hereto as Exhibit "B" (the "Comly Declaration"), Comly has informed the Debtor that it holds no adverse interest to the Debtor or the estate and has no connection to the Debtor's creditors, the Debtor, or other parties-in-interest related to the Debtor that would prevent Comly from being appointed as provided herein.

NOTICE

18. Notice of this Application has been provided to: (a) United States Trustee for the Eastern District of Pennsylvania; (b) counsel for the Buyer; (c) counsel to PNC Bank, N.A.; and (d) all parties requesting notice pursuant to Fed. R. Bankr. P. 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

NO PRIOR REQUEST

19. No prior request for the relief sought in this Application has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests an order in the form attached: (i) authorizing the Debtor's retention of Comly as his Marketing Broker as of the date of this Application; and (ii) granting such other relief as the Court deems appropriate.

Dated: June 22, 2021

FLASTER/GREENBERG P.C.

By: /s/ William J. Burnett

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